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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,139	09/29/2003	Robert Turner	920673-94835	2501
23644 7590 08/14/2008 BARNES & THORNBURG LLP P.O. BOX 2786 CHICAGO, IL 60690-2786			EXAMINER BLAIR, DOUGLAS B	
			ART UNIT 2142	PAPER NUMBER
			NOTIFICATION DATE 08/14/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent-ch@btlaw.com

Office Action Summary	Application No. 10/674,139	Applicant(s) TURNER ET AL.	
	Examiner DOUGLAS B. BLAIR	Art Unit 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Claims 1-3 and 5 have been amended. Claims 7-17 are now added. Claims 1-17 are pending.

Response to Arguments

Applicant's arguments, see the responses, filed 9/14/2007 and 12/7/2007, with respect to the rejection(s) of claim(s) 1-17 under 35 USC section 103 have been fully considered and are persuasive. Specifically the applicant's arguments with respect to the Wu reference are considered to be persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent Application Publication Number 2004/0054805 by Sen et al.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the newly claimed call agent and program must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

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should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Objections

Claim1 is objected to because of the following informalities: The amendment to claim 1 features a predicate lacking a subject. Specifically, limitation (c) starts with the action of "checking for a list of proxies at each node traversed during traversal of the model" and then features the limitation "a plurality of media proxies being linked to at least one node in the nodular network model, the plurality of media proxies being linked other node in a list". The

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claim needs to define how the "plurality of media proxies" limitation relates to the rest of the limitations of claim 1. This relationship should be clearly defined. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 16 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 16 is directed towards a program. A program is considered software per se. Software per se does not fit into any statutory category of invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication Number 2002/0186685 to O'Brien, JR. et al. in view of U.S. Patent Number 6,930,983 to Perkins et al. in further view of U.S. Patent Application Publication Number 2004/0054805 to Sen.

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As to claim 1, As to claim 1, O'Brien teaches a method of selecting a media proxy for transmitting a media stream along a path (paragraph 3) comprising: receiving a path setup request which specifies data endpoints for the path (paragraph 31, the call is a path setup request between the PC client system and the receiving device of the end user), traversing a nodular network model in a predetermined pattern dependent on the specified media endpoints (paragraph 32, the media proxy is determined based on its proximity to the client PC), and selecting a media proxy based on a traversal as the said proxy for the path using a predetermined selection policy (paragraph 32, selection is based on the shortest path or the most reliable); however O'Brien does not explicitly teach a method of traversing a network model and checking for a list of proxies at each node and determining the availability of proxies in the list of proxies.

Perkins teaches a method of selecting a proxy including checking for a media proxy at each node traversed during traversal of a network model (col. 36, lines 8-28).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of O'Brien regarding a method for selecting a media proxy with the teachings of Perkins regarding traversing a network model and identifying media proxies because O'Brien does not describe how the media proxies are initially identified and Perkins provides a possible implementation for initially identifying proxies.

Sen teaches a method of checking for a list of media proxies at each node traversed during traversal of the model, with a plurality of media proxies being linked to at least one node in the nodular network model (Figure 2 and corresponding disclosure).

It would have been obvious to one of ordinary skill in the computer networking art at the time of the invention to combine the teachings of the O'Brien-Perkins combination regarding

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traversing a model to find proxies with the teachings of Sen regarding the concept of using a list to find the best possible proxy because selecting the optimal proxy improves streaming performance (Background of Sen).

As to claim 2, Sen teaches a method according to claim 1, wherein the list orders the media proxies linked to the node by preference and wherein the method further includes selecting the next proxy in the ordered list if the selected proxy is unavailable (Figure 2).

As to claim 3, Sen teaches a method according to claim 1 wherein the list includes a pool of proxies of equal preference and wherein the method further includes selecting a proxy in the pool using a predetermined strategy (see background).

As to claim 4, Sen teaches a method according to claim 3, wherein the said predetermined strategy is selected from a group containing random and round-robin strategies (see background).

As to claim 5, O'Brien teaches a method wherein the proxy includes a local designation which indicates whether the proxy should be used only for paths between endpoints in a particular subset of the whole network, and wherein the step of selecting the proxy includes checking the local designation and if the proxy is designated as local, determining if the specified media endpoints fall within the subset of the network (paragraph 34).

As to claims 6-10, the O'Brien can be considered to make obvious the applicant's claimed call agent because the applicant does not provide any limiting definition of what a "call agent" comprises.

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As to claim 11, O'Brien teaches a method according to claim 1, wherein the nodular network model is stored as a tree hierarchy (paragraph 32, the media proxy is determined based on its proximity to the client PC).

As to claim 12-14 and 16-17, they are rejected as indicated in the mapping of the rejections of the previous claims.

Allowable Subject Matter

Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The cited references do not anticipate or make obvious the features of claim 15 in the context of claim 12.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas B Blair/
Primary Examiner, Art Unit 2142